Stillaguamish Tribe of Indians
Government to Government Consultation
Sheraton Hotel, Tacoma WA
1700 hours. July 24, 2006

Stillaguamish Tribal Points for Consultation with NIGC

(Introductions to the Honorable Phil Hogan, and members of the Commission.)

Ed Goodridge Sr.	**CEO, STECO**
Shana Swanson	**President, STECO**
Jhan Smith	**Director, Stillaguamish Gaming Commission**
Kevin Parker	**Director of Gaming**

Tribal Statistics:
Stillaguamish Tribe has 192 members.
Tribal members employed by Tribe is
Tribe operates a single casino: Angel of the Winds. 425 Class III VLT, 12 Table Games, 90 Class II Bingo Terminals

Our duty in regard to operating a casino for the Stillaguamish tribe is relatively easy to describe. The overall defining trait of a casino is uncertainty. What makes a casino viable *is* that uncertainty. If a player *knew* he was going to lose, he wouldn't gamble. The *possibility* of winning by wagering on fun and exciting games brings players in the door. Our job is to manage that uncertainty.

We manage uncertainty by using the tools and data at our disposal to make informed decisions. We are bound by rules and regulations imposed by the state and federal governments to insure the product we turn out, responsible adult entertainment in the form of games of chance, is both profitable and legal.

In establishing the Internal Control procedures that govern gaming for the Angel of the Winds Casino, we followed all the policies and procedures established in our Tribal/State compact, our Tribal Gaming Ordinance and those rules and regulations established by the NIGC and the State of Washington regarding Class III gaming. Additionally, we followed all the prescribed rules set forth by the NIGC regarding the use of Class II technological aids to the game of Bingo.

We utilized only vendors who had achieved recognition for their games or devices through the NIGC in the form of a game classification opinion issued by the Office of the General Counsel. Further, the updated system we are now utilizing has also been approved as a Class II Game through a different, but similar classification opinion issued by the NIGC.

The proposed rules outlaw even the Class II electronic bingo games previously approved by the NIGC. **In fact, NOT ONE single Class II electronic bingo game approved by the NIGC, since IGRA was enacted, would be legal under the proposed regulations.** Now, should these changes in the Federal Resister become binding, our tribe will be out of compliance ***for following your previous policies*** **to** ***the letter.***

Further, there is no true grandfather clause allowed for systems or games that followed your previous rules! This tribe, along with all other tribes utilizing Class II Games in a legal and responsible manner, will be penalized for doing the right thing. Can the esteemed members of the Commission please help me to explain this to our Tribal Elders? We have yet to explain this to them, as these changes are just proposed and not thus far in effect.

What does worry our Tribal Council, however, is this Commission's disregard of tribal comment in drafting these rules. In your own preamble, you state the tribes strongly disagreed with the decisions made by the Commission regarding auto daubing, time delays, advocating authorizing wholly electronic pull tab games; as well as the tribes asking that no change to the current rule definition of "Electronic or electromechanical facsimile" of games of chance be made. Further, your preamble states that the Commission is bound by Congress's intent, as expressed in IGRA, to promulgate rules that clearly distinguish technologically-aided Class II games from "Electronic or electromechanical facsimiles" of any game of chance... The group of representatives before you are not attorney's and therefore hesitant to raise an issue questioning a legal opinion. That being said, can you identify the basis in IGRA that states Class II must be distinctive?

Equally troubling to The Stillaguamish Tribe is an apparent attempt by the Commission to institute an administrative reversal of judicial decisions. Again, we are not attorneys, but it is our belief that Federal law can not be reversed through the rule making process. In recent years, tribes have won important victories before the Ninth and Tenth Circuit Courts of Appeal in relation to linked electronic bingo games. These cases made clear that that tribes are not limited to "traditional" bingo games and confirmed that Class II games can be both fast and profitable. *United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000); *United States v. 162 MegaMania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000).

We, the representatives of the Stillaguamish tribe, do not view this meeting as a government to government consultation. We believe that the Commission is not following its own NIGC policy making principles and guidelines; as defined in the National Indian Gaming Commission Government-to-Government Tribal Consultation Process, which was published in the Federal Register, March 24, 2004. This, in part, states "To the extent practical and permitted by law, the NIGC will engage in regular, timely and *meaningful* Government–to-Government consultation and *collaboration* with Federally recognized tribes when formulating and implementing NIGC administrative regulations, bulletins, or guidelines, or preparing legislative proposals or comments for

Congress, which may substantially affect or impact the operation or regulation of gaming on Indian land by tribes under the provisions of IGRA". We believe that in order to have meaningful consultations between our Governments the following must be recognized pertaining to this situation:

1. Consultation Process
    a. Timeline is inadequate to prepare comment, especially in light of the fact that the technical standards have yet to be published.
    b. The technical standards and classification standards should be viewed together in order for each tribe to determine the entire package of regulations presented. Comment on the classification standards should not expire until after publication of the technical standards and a sufficient review period.
    c. A public hearing is needed to fully address all of the issues.
    d. Were a public hearing to be scheduled, proper time to prepare comment is needed (i.e. review of entire regulatory package; technical, classification, and definitions).
    e. Until a meaningful and collaborative consultation process is developed, meetings held by NIGC are merely comment meetings.
    f. Consultations need to be held in a variety of geographic locations with affected tribes.
    g. The invitations for consultation must be made earlier, with the procedure for confirmation clearly described.
    h. How is the public record made, and disseminated?

Based on conservative projections, tribal governments stand to lose over **$1 BILLION** of revenue a year under the proposed rules. There are approximately 50,000 Class II electronic game stations in use by Tribes today generating over $2 billion of revenue annually- this means that a prime source of funding for tribal governmental programs will almost be cut in half. (Explain the Stillaguamish situation concerning the 250 licenses leased out for three years)

i. Economic Impact
    i. How is the NIGC determining the financial impact of these proposed regulations? Of importance to our tribe, what about the impact to our capital equipment? Has the Commission taken into consideration what impact these changes will have on the contractual obligations of each tribe? We just refinanced $11,000,000 in debt with a major lender in Indian country based, in large part, on the profitability of the Class II machines within our facility. Our Class II machines out perform our Class III machines because Class II allows cash in at the machine, wide area progressive jackpots and multi denominational machines. Your proposed rule changes will result in lower revenues for our facility, which will in turn invalidate the ratios we must maintain for compliance purposes.

ii. There has been no impact study to determine the true impact on tribal gaming facilities or the tribal community's dependence upon them.

iii. Currently in Washington State, Class II gaming is the only opportunity for growth in Indian gaming. Without the opportunity to install Class II machines to meet market demand, Indian gaming in Washington will suffer at the expense of tribal services.

iv. Has the Commission fully evaluated the cascade effect on tribal services and tribal businesses? Many tribal businesses and tribal services have been made available due to the revenue stream provided by the tribes Casino. Currently, our Class II machines make up 18% of our total floor. Should the economic viability of these machines be removed, it will affect fully 25% of our facilities revenue stream. Add to this the projected impact on the neighboring economies, utilizing a local multiplier effect, and the total impact on our small facility and the surrounding communities is frightening. If we take the $185 win per machine per day we currently enjoy, multiply it by the 90 class II machines in our facility times, 365 days per year we estimate gross revenues of $6,077,250. According to Keynesian theory, we can assume that $10 generated by class II machines in our facility will create $40 in total income to the local economy. Using this multiplier, the local communities can expect to see a substantial decrease of the $24,309,000 these machines add to the local economy.

v. Who is going to explain to my tribal council, should this policy change be implemented, that we are out of compliance with the NIGC even though we followed all the rules and regulations imposed by the NIGC; utilized equipment approved as a Class II device by the NIGC and used a company recognized as a Class II vendor by NIGC?

vi. Who is going to pay for the modifications we will have to make in order to follow these changes? Why are the NIGC mandated changes the fiscal burden of the Stillaguamish Tribe of Indians when we followed all of your current policies and procedures? The vendor can not bear the cost of these changes and will pass the costs onto this tribe, as well as every other tribe utilizing Class II gaming devices. Is the Federal Government going to bear these costs?

While the proposed rules would not prohibit the use of electronics in Class II gaming altogether, the permissible games will be exceptionally slow, less aesthetically pleasing, less enjoyable, and far less appealing to players; making these games dramatically less profitable than current Class II games.

a. Overview of effect of proposed regulations (all without basis in IGRA):
    i. Arbitrary delays in daub, ball release, etc., prohibition of auto daub=slows play, reduction of profits
    ii. Screen appearance would require 50% of screen to be bingo card=arbitrary requirement
    iii. New pull-tab proposals are unnecessarily burdensome on players

These new regulations impose certification by NIGC of Class II games before they may be placed on floor, as well as certification by testing lab, which must also be certified by NIGC. This slows a Tribe's ability to get new machines and/or new game titles to the floor. What makes the NIGC feel that because a game is fun and exciting to the players and profitable to the tribe, it must be a Class III device? We urge the NIGC to stop attempting to define Class II gaming by what it isn't and set the definition by what it is! What is a game of Bingo?

b. A game of Bingo or other game similar to Bingo consists of:
    i. The random draw or electronic determination of numbers or other designations;
    ii. The release of sufficient numbers or other designations to form the pre-designated game winning pattern on a card held by the winning player and
    iii. Players competing against each other to cover the numbers or other designations on their cards(s) when they are released.

c. A game ends when a player claims the win after obtaining and daubing the game winning pattern and consolation prizes, if any, have been awarded in the game.

The machine certification process does not afford due process. The NIGC gives itself sole authority to certify labs, who then certify game classifications. This includes no appeal provision for laboratories and limits the tribes' right to a hearing. The most egregious part of the Certification requirements to this tribe is that Commission objections can be raised at any time! The Chairman or his designee may object to any certification within 60 days. If no objection is raised within 60 days, the testing lab, requesting party and sponsoring tribe may assume the Commission does not object. However, nothing precludes the Commission from objecting after 60 days upon a showing of good cause.

Again, who is going to explain to my tribe, that although we followed all the rules the NIGC has set regarding Class II, the Commission saw fit to change the rules in mid stream. Then, after setting these far reaching new rules, a Class II game or system is still not safe after having been subjected to the certification standards even after a 60 day objection window? Has this rule been proposed to insure that an economically viable game does not make it out of the laboratory, or to insure that should the NIGC not be able to keep up with its end of the certification process, the Commission is still covered?

Tribal governments are the largest employer in many of the areas that would be affected by these changes. The NIGC's proposed rule will result in a large loss of jobs at Class II facilities. This means that tens of thousands of American jobs will be lost in areas of the country that can least afford it. The Stillaguamish Tribe employs the majority of its membership in Tribal enterprises other then it's casino. We do, however; employ natives from 20 tribes other then the Stillaguamish. With the loss of these machines in regard to revenue generation, we will have to eliminate jobs within our facility. This unemployment will have a cascading affect on those tribes whose members we employ; some of which do not have facilities of their own to employ their membership.

We believe that the reclassification issues surrounding Class II gaming is a serious political concern. There are States within the Union that have not entered into Class III compact negotiations with the Tribes within its boundaries, for whatever reason. As we understand it, this becomes an issue because *Seminole Tribe of Florida v. Florida no. 94-12 (decided 3-27-96)* does not necessarily guarantee good faith or sovereign immunity in Class III compact negotiations (11th Amendment issue). In the State of Washington, Class II gaming is the only leverage the tribes hold against a State Government increasingly interested in revenue sharing. With the addition of several tribal casinos in the next two years, there will not be enough licenses to insure the economic viability of these tribal enterprises. Those facilities will have to pursue the Class II alternative to fund their tribal programs. We have recognized the importance of the NIGC by following all of your rules and regulations to date. That being noted, we urge you to:

1. Remove the prohibition of Auto Daub and the 10 second delay in play. These standards appear to be designed to limit participation rather then increase it. The two second delays will force synchronicity between players and will remove the spontaneity of the game.

2. Remove the display restriction; two screen and multiple card display requirements. This is a cost the tribes must absorb that is just not necessary. We have no problem displaying that this is a bingo game; we actively promote it in our facility.

3. Remove all provisions under which the NIGC attempts to assert jurisdiction over private, 3rd party gaming laboratories. We feel that this will lead to excessive pressure over vendors and ultimately to less innovative game design.

4. The current definitions work to classify games, they are supported by court precedent. Please leave them as they are written.

5. Alternative classification and technical standards offered by tribes must be considered. The Commission must follow up with a report that explains why the NIGC disapproved of the alternatives, or why NIGC has not incorporated

a submitted alternative. The Government-to-Government Executive Order, the Administrative Procedure Act and stated NIGC policy require consultation including consideration of suggested regulatory alternatives.

6. The effective date/compliance deadlines are inadequate to allow tribes and manufacturers to design, certify and implement games which are compliant. The NIGC must **Strike Section 546.10(c)(3).** Currently, it takes 6-8 weeks to take delivery of a pre-approved Class III game in the State of Washington. There is no possibility that vendors can design a game or system to NIGC specifications, get the submission through the companies own quality assurance program and still get it to the gaming labs in six months. Add in the laboratory certification process, its place in the queue and the vendor's ability to get the product out to a current Class II market of 50,000 machines and you are looking at more then a 16 month window. NIGC must Insert a tiered implementation of regulations allowing for orderly transition/change out of equipment

7. The NIGC must hold public hearings on the proposed classification and forthcoming technical standards.

8. The proposed classification regulations and technical standards must be published in the Federal Register together, at least once more to ensure adequate review and comment period.

In closing, The NIGC would best serve Indian Country and the Stillaguamish Tribe of Indians by stepping away from these proposed changes. These changes are bound to be disputed and challenged in the Federal Courts. The money the Tribes and the Federal Government will spend on this issue would be far better spent on social services, youth scholarships and elder care.